

ESTTA Tracking number: **ESTTA240067**

Filing date: **10/01/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049694
Party	Defendant M&O Activewear, Inc.
Correspondence Address	Jonathan G. Musch Thompson Coburn, LLP One US Bank Plaza St. Louis, MO 63101-1611 UNITED STATES jmusch@thompsoncoburn.com, mhimich@thompsoncoburn.com
Submission	Answer
Filer's Name	Matthew J. Himich
Filer's e-mail	mhimich@thompsoncoburn.com, jmusch@thompsoncoburn.com
Signature	/Matthew J. Himich/
Date	10/01/2008
Attachments	Answer_&_Aff._Def_for_M&O_mark_cancellation.pdf (4 pages)(17288 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RETAIL LICENSING COMPANY,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92049694
)	
M&O ACTIVEWEAR, INC.,)	Directed to U.S. Reg. No. 2,633,279
)	for M & O KNITS
Registrant.)	

REGISTRANT’S ANSWER AND AFFIRMATIVE DEFENSES

This is registrant M&O Activewear, Inc’s (“M&O”) Answer and Affirmative Defenses to petitioner Retail Licensing Company’s (“RLC”) Petition for Cancellation. To the extent any allegation of RLC’s Petition for Cancellation is not expressly admitted, that allegation is hereby denied.

In answer to the paragraph at the bottom of page one of RLC’s Petition for Cancellation, M&O denies that RLC will be damaged by M&O’s registration and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies same leaving RLC to its proof.

As for the numbered paragraphs, M&O answers as follows:

1. M&O is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies same.
2. M&O is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies same.
3. M&O denies the allegations of paragraph 3.
4. M&O admits the allegations of paragraph 4.

5. M&O admits the allegations of paragraph 5 to the extent they accurately quote from M&O's April 30, 2008 Combined Declaration of use and Incontestability Under Sections 8 and 15. As identified in M&O's April 30th Section 8 and 15 filing, the goods or services in use in commerce are identified as "[c]lothing, namely shirts, pajamas, sweatshirts, and pullovers".

6. M&O denies the allegations of paragraph 6.

7. M&O denies the allegations of paragraph 7.

8. M&O denies the allegations of paragraph 8.

9. M&O denies the allegations of paragraph 9.

10. M&O denies the allegations of paragraph 10.

11. M&O denies the allegations of paragraph 11.

12. M&O denies the allegations of paragraph 12.

PRAYER FOR RELIEF

M&O denies that RLC is entitled to any relief whatsoever against M&O, and therefore denies RLC's entitlement to the relief requested in the prayer for relief.

AFFIRMATIVE DEFENSES

For its affirmative defenses, M&O states:

(1) RLC's Petition for Cancellation fails to state a claim upon which relief can be granted.

(2) M&O uses the mark shown in U.S. Registration No. 2,633,279 in connection with "clothing, namely shirts, pajamas, sweatshirts, and pullovers".

(3) The restriction sought by RLC to U.S. Registration No. 2,633,279 will not avoid a likelihood of confusion between the parties' respective marks.

(4) RLC's claims are barred under the equitable doctrine of waiver or estoppel to the extent RLC has taken a position in its Petition inconsistent with any position adopted before the United States Patent and Trademark Office.

(5) M&O reserves its right to amend its Answer and Affirmative Defenses to assert any defense based on facts as may be later discovered during these proceedings.

ACCORDINGLY, M&O respectfully requests that the Board dismiss RLC's Petition for Cancellation with prejudice, and grant all other and further relief to which M&O is entitled.

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ Matthew J. Himich
Matthew J. Himich
Jonathan G. Musch
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000 (phone)
(314) 552-7000 (fax)

*Attorney for Registrant
M&O Activewear, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 2008, a copy of the foregoing was sent via first class U.S. Mail, postage prepaid, to:

Theodore R. Remaklus
WOOD, HERRON & EVANS, L.L.P.
2700 Carew tower
441 Vine Street
Cincinnati, Ohio 45202-2917

/s/ Matthew J. Himich
Matthew J. Himich

*Attorney for Registrant
M&O Activewear, Inc.*